



ALAN WILSON  
ATTORNEY GENERAL

June 21, 2016

The Honorable Peter M. McCoy, Jr., Member  
South Carolina House of Representatives  
135 King Street  
Charleston, SC 29401

Dear Representative McCoy:

We received your opinion request regarding a decision of the South Carolina Worker's Compensation Commission. Specifically, you state the following:

I am requesting a legal inquiry into a scenario that has played out in the district I represent. A constituent was seriously and permanently disabled in a workplace injury. The South Carolina Worker's Compensation Commission found that he was entitled to ongoing medical care to treat his lifelong complications in an admitted workplace injury claim. Although portions of the order from the South Carolina Worker's Compensation Commission were appealed to the South Carolina Court of Appeals by the claimant, neither party appealed the medical care portion and thus it became the law of the case. While the appeal has been briefed it has not been heard by the Court of Appeals, and the South Carolina Worker's Compensation Commission believes they do not have the authority or jurisdiction to hear a motion to enforce medical care until a remitter has been issued in the case.

**Issue:**

The South Carolina Worker's Compensation Commission is given exclusive jurisdiction to hold hearings related to work injuries and all related claims under Title 42 of the SC Code of Laws. Appeals from the South Carolina Worker's Compensation Commission are vested in the South Carolina Court of Appeals. Appeals can take years and under current law an appeal does not act as a supersedeas to orders given by the South Carolina Worker's Compensation Commission. S.C. Code § 42-17-60 (2013). The award of the commission, as provided in § 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in § 42-17-50, is conclusive and binding as to all questions of fact.

However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals. Notice of appeal must state the grounds of the appeal or the alleged errors of law. In case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title. Interest accrues on an unpaid portion of the award at the legal rate of interest as established in S.C. Code Ann. § 34-31-20(B) during the pendency of an appeal. The above code indicates that the Commission retains authority to enforce provision of benefits by the defendants to the claimant during the pendency of the appeal.

**Scenario:**

An injured worker files a claim for a work injury and is found to be partially and permanently disabled. This Order from the South Carolina Worker's Compensation Commission provides for permanent medical care to be provided to the injured worker. The worker appeals errors of law and errors of fact of the decision to the SC Court of Appeals. The continuing medical care was NOT appealed by any party. Shortly after the appeal was taken, the insurance company stopped providing medical care to the worker. When the injured worker filed for a hearing to have the medical care provided with the South Carolina Worker's Compensation Commission, the Commission determined that they lacked jurisdiction to hold a hearing to enforce the provision of medical care to the injured worker that was contained in the order.

As the actions of the commission seem to be contrary to the above mentioned code I would respectfully ask for your office's opinion on the following.

**Question:**

Do injured workers have the right to demand a hearing from the South Carolina Worker's Compensation Commission to compel medical care, as ordered, after an appeal has been filed but prior to the issuance of a decision/remitter from the court of appeals? (Note: the medical care is not at issue in the appeal, and has been ordered by the commission).

**LAW/ANALYSIS:**

Our Office does not know why the South Carolina Worker's Compensation Commission ("Commission") reached its conclusion because we have been unable to obtain a copy of the order.<sup>1</sup> However, we normally defer to decisions of administrative agencies, as shown by our March 28, 2001 opinion which states the following:

At the outset, this Office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of the statute in question. See OPS. ATTY. GEN. Mar. 9, 2000; Nov. 25, 1998. As we have emphasized in earlier opinions "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons." OP. ATTY. GEN. Oct. 20, 1997 (quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986)). If the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court would have adopted in the first instance. See OP. ATTY. GEN. Mar. 12, 1997.

Op. S.C. Atty. Gen., March 28, 2001 (2001 WL 564572).

Accordingly, this Office defers to the interpretation by the Commission.

**CONCLUSION:**

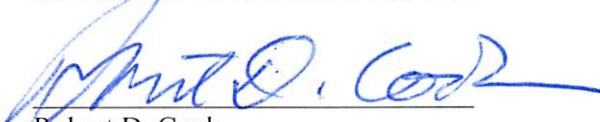
As this Office typically defers to the interpretation of the administrative agency charged with the enforcement of the statute in question, we defer to the interpretation by the South Carolina Worker's Compensation Commission.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

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<sup>1</sup> I have attempted unsuccessfully to contact you via telephone and email to obtain a copy of the order. Also, the Commission was unable to provide us a copy of an order without such identifying information as the name of the claimant, his address, his social security number, and the date of the injury.